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IN THE

Supreme Court of the United States

October Term, 1954

No. 652

WARREN M. WILSON,
Petitioner

vs.

HOMESTEAD VALVE MANUFACTURING COMPANY

PETITIONER'S REPLY BRIEF

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INDEX

PAGE

The respondent's brief fails to answer petitioner's argument that the Court of Appeals misconstrued the contract and distinguished the case from the general rule on erroneous and nonexistent bases, thereby establishing a precedent in conflict with the decisions in the other circuit courts, the Pennsylvania courts and the general rule of law 1

The plaintiff's bonus or commission was not based on percentages of "aggregate yearly earnings" but on percentages of "net volume of sales" 3

PETITIONER'S REPLY BRIEF

THE RESPONDENT'S BRIEF FAILS TO ANSWER PETITIONER'S ARGUMENT THAT THE COURT OF APPEALS MISCONSTRUED THE CONTRACT AND DISTINGUISHED THIS CASE FROM THE GENERAL RULE ON ERRONEOUS AND NONEXISTENT BASES, THEREBY ESTABLISHING A PRECEDENT IN CONFLICT WITH THE DECISIONS IN THE OTHER CIRCUIT COURTS, THE PENNSYLVANIA COURTS AND THE GENERAL RULE OF LAW

The brief of the Respondent wholly fails to answer the petitioner's principal contention, that is, that the assumptions and conclusions upon which the Court of Appeals distinguished this case from the general rule are erroneous and without foundation in fact. Respondent's brief does not even attempt to answer the fact that the Court of Appeals set up an entirely different employment agreement by misreading one provision and supposing that it contained other provisions not contained in the contract. Specifically, the Respondent's brief does not answer Petitioner's arguments:

(a) that the agreement does not provide for a special commission on direct sales whether of valves or jennys as distinguished from a bonus on all sales through agents under plaintiff;

(b) that plaintiff was not a "managing executive officer" of defendant in any proper sense of that term;

(c) that plaintiff's bonus was not based on defendant's earnings from sales in his territory;

(d) that plaintiff's bonus was not based on accepted orders which might not be filled.

On the basis of these erroneous assumptions and conclusions, the Court of Appeals distinguished this case from the general rule applied in the other Circuits, the Pennsylvania Appellate Courts, the New York Appellate Courts and generally throughout the states, that an employee, who is to be paid a commission on sales, earns his commission when the order is accepted by his employer regardless of when delivery is made. By distinguishing this case from the general rule on false and nonexistent bases, the Court of Appeals has in effect established a principle in conflict with the decisions in the other Circuit Courts, the Pennsylvania Appellate Courts and the Courts generally. The question before your Honorable Court is not merely interpretation of a private contract but rather a question of uniformity of decision on a general principle of law universally applied in construing employment contracts containing similar language.

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THE PLAINTIFF'S BONUS OR COMMISSION WAS NOT BASED ON PERCENTAGES OF "AGGREGATE YEARLY EARNINGS" BUT ON PERCENTAGES OF "NET VOLUME OF SALES"

Respondent's brief repeatedly states that plaintiff's bonus was to be calculated by "graduated percentages of the 'aggregate yearly earnings' from 'sales' in his territory" (Brief of Respondent, pages 4, 17, 20). This is incorrect as appears from a careful reading of the contract which clearly provides the bonus is based on:

> "4% on the first $60,000.00 *net volume of sales*
> 5% on the next $30,000.00 *net volume of sales*
> 6% beyond $90,000.00 *net volume of sales*"
>
> (emphasis supplied)

and *not on percentages of earnings* (see contract in Opinion at page 56 of the Petition).

It is submitted that the other matters argued in the Brief for Respondent are covered by the arguments in the Petition for Writ of Certiorari.

Respectfully submitted,
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